THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17499 of 1996

Date: 04.04.2007

Between:

Mangalesh Kumar

… Petitioner

AND

The Government of India, rep, by its
Secretary, Defence, New Delhi
& others.

… Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17499 of 1996

ORDER:-

This writ petition is filed by the petitioner for a writ of Mandamus to direct the 2nd respondent to regularize his services in Mishra Dhatu Nigam Limited (Midhani) in one of the suitable posts.

The petitioner has been working with respondent Nos.2 to 4 since July 1990 and his grievance is that though he has put in 240 days of continuous service in a year, his services are not regularized for six years.

A counter-affidavit is filed on behalf of respondent Nos.2 to 4 wherein it is stated that the 2nd respondent – organization is a High Technology Research oriented production unit, which has on its rolls 1459 employees including 308 Executives and 1151 Non-Executives having brilliant background in different disciplines and skills. It is also stated that the petitioner was not appointed as a Fitter as claimed by him and that he does not possess ITI qualification or any certificate to that effect. It is further stated that the petitioner's name was never sponsored by the Employment Exchange in respect of any of the posts notified

evidently for the reason that he is not having prescribed qualifications.

Learned counsel for the petitioner drew my attention to letter dated 12.12.2000 addressed by the Deputy General Manager (P&A-II) wherein it is mentioned that five persons including the petitioner have been working for a long time and that the petitioner may be considered for the post of Furnace Operator in WG-2 level. The contention of the learned counsel is that though among the five persons indicated in the said letter, the petitioner has put in the longest service of 11 years and the other persons viz., Manikraj, R.V. Nagender, L. Satyanarayana and S. Shankar have put in far less number of years of service, the said four persons were appointed in regular posts while the petitioner is denied any such appointment.

Respondent Nos.2 to 4 filed an additional counter-affidavit in WPMP.No.21534 of 1996. It is apt to extract paragraphs 4 to 6 of the said counter-affidavit.

> "With reference to para 4 of the additional affidavit, the respondent submits that the Superalloys Plant of respondent is a Hi-tech Industry employing highly skilled, qualified and experienced work force to man the sophisiticated operations of the company. The petitioner herein does not meet the eligibility criteria either for the post of Steel Melting Hands or Artisan "A" as claimed by him. It may also be mentioned that his name was never sponsored by the Employment Exchange for any of the posts notified at any point of time, probably for the reason that he is not having prescribed qualification.

As regards the petitioner's contention of regularization of his 4 juniors namely, (1) R.V. Nagender Rao, Staff No.4545; (2) Manikraj, Staff No.4546; (3) L.Satyanarayana, Staff No.4547; and (4) S. Shanker, Staff No.4548, in the designated posts of Steel Melting Hands, the respondent submits that the names of all these 4 candidates was sponsored by the Employment Exchange. Apart from this, the 4 vacancies of Steel Melting Hands are reserved for Scheduled Castes/Scheduled Tribes. The first 3 candidates namely, S/Shri R.V. Nagender Rao, Manikraj and L.Satyanarayana belong to Scheduled Caste community and whereas the fourth candidate Shri S. Shanker belongs to Scheduled Tribe community. The petitioner does not come under the reserved category. Therefore, the question of considering the candidature of the petitioner for the reserved vacancies does not rise. Moreover, the eligibility criteria for the posts of Steel Melting Hands is "SSC with NAC (national Apprenticeship Certificate)". All the above 4 candidates are qualified and met the eligibility criteria of the respondents and whereas the petitioner is not a "Matriculate" and does not possess the prescribed qualification for being considered to the posts of Steel Melting Hands. Mere being a Matriculate, he is not eligible for the post. He must possess ITI certificate with NAC (National Apprenticeship Certificate), which he does not possess. He acquired Matriculation qualification only in April/May 2003. Therefore, the question of considering the petitioner's candidature for the Steel Melting Hands post and his regularization does not arise.

As regards the contention of the petitioner that his case was approved for regularization along with four juniors, the respondents respectfully submits that 2 officers of the company erroneously included the name of the petitioner while considering the candidature of the four eligible employees for the posts of 'Steel Melting

Hands'. The Chief Vigilance Officer of the company at the processing stage itself detected the error that the petitioner is a Non-Matriculate and his name was not sponsored by the Employment Exchange, which is a prerequisite for any recruitment in the workman category. As the petitioner was not eligible as per the rules of the respondent's company, his case was not considered. Realizing the mistake, the petitioner's name was accordingly not considered by the respondent's management. In this connection the respondents submits that the qualification requirement for the post of Steel Melting Hand is "Matriculation with NAC (National Apprenticeship Certificate) in Steel Melt Trade". The petitioner being a non-matriculate does not meet the eligibility criteria and as such he was not considered. The petitioner mischievously submitted the document to mislead the Hon'ble Court. It is not out of context to mention that out of the two officers who have erroneously recommended the name of the petitioner, one officer was not considered for promotion to the next higher grade i.e., Dy. General Manager post and the other officer who had applied for voluntary retirement, his case was withheld for want of vigilance clearance by the Vigilance Department of the respondent's company as a punitive action. Therefore, no credence need to be given to the document in question submitted by the petitioner as his claim was mischievous and not correct. Even today, he does not possess the required qualification."

During the course of hearing, I directed the learned counsel for respondent Nos.2 to 4 to produce the record in order to be satisfied whether the 2nd respondent – organization provided for reservation in appointments. Today she produced the file containing the rules, which are called Midhani Recruitment Rules, 2001. While Rule 6 of the said Rules envisages method of recruitment, Rule 7 provides for reservation, recruitment. Rule

7(1) provides that the company shall follow the directives of the Government concerning the reservation of vacancies and concessions allowed for candidates belonging to Scheduled Castes/Scheduled Tribes/OBCs/PHs/Ex-servicemen etc.

The averments contained in paragraph 5 of the counter-affidavit filed in W.P.M.P.No.12534 of 1996 have not been denied in the reply filed by the petitioner. It is thus evident that the four persons whose names are mentioned hereinabove and who are juniors to the petitioner were absorbed/appointed under the categories of Scheduled Castes and Scheduled Tribes respectively. Therefore, it cannot be said that the 2nd respondent acted arbitrarily in appointing the juniors of the petitioner, overlooking his seniority.

Learned counsel for respondent Nos.2 to 4 further submitted that there is no scheme existing with the 2nd respondent – organization providing for any absorption on the basis of the length of the service of the temporary workmen. She stated that even the workmen working with the 2nd respondent – organization have to get themselves registered with the Employment Exchange and if they are qualified, their cases will be sponsored by the Employment Exchange in their due turn and the 2nd respondent would consider their cases for appointment against regular vacancies.

Having regard to the aforementioned facts of the case, I am satisfied that the action of the 2nd respondent in not absorbing the

petitioner does not suffer from any illegality or arbitrariness. In the absence of any right conferred on the petitioner for absorption, he cannot get any relief from this Court.

Merely because, the petitioner is working for a long number of years, he has no right to claim absorption. The Supreme Court in **SECRETARY, STATE OF KARNATAKA v UMADEVI**[1] held that a person by virtue of his working in an organization as a casual labour or workmen does not get any right for absorption and he has to compete with others for regular appointment. The case of the petitioner is no exception to this law.

For the aforementioned reasons, the petitioner failed to make out any case for interference in this writ petition. The writ petition is accordingly dismissed. No costs.

It is needless to observe that it is open to the petitioner to apply for regular post as and when it is notified and he is sponsored by the Employment Exchange.

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C.V.NAGARJUNA REDDY, J

Date: 04.04.2007
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[1] (2006) 4 SCC 1